THE CODE NAPOLEON

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The law is neither a trade, nor a solemn jugglery, but a science. It is founded on great philosophical bases, although that part of it which receives its sanction from legislative assemblies not infrequently confuses, if it does not confound, some fundamental principle of civilization which should govern man in his relation to his fellowmen. There exists and ever has existed among lawyers, publicists, and philosophers a controversy over the propriety and the beneficent consequences of the reduction of the law into a single body of law or code. One conception of the origin of law rests on the theoretic assumption of a social contract supposed to have been entered into by men in a state of nature. Another conception is that law emanates only from a supreme civil power commanding what is right and prohibiting that which is wrong. Still another conception is that all law is of divine origin, whether derived from nature or ordained by God as revealed in the Holy Scriptures. But all schools of thought concur in the idea that the law should be so expressed as to be most easily within the grasp and comprehension of the people intended to be controlled and governed by it. The law should never be, as the edicts of Caligula, hung upon high pillars beyond the power of the people to read and to know; nor be buried in the labyrinths of hidden mystery resulting from its formulation and development in individual instances.

About two centuries before the codification of the French law, there was a sharp controversy between the heads of the English equity and law courts—Bacon and Coke—as to the best form of judicial expression of reported cases. The scholarly logician of the Chancery Court advocated the

enunciation of the controlling principle in the form of maxims, to be applied in the decision of subsequent cases. The great Chief Justice of the Law Court was of the opinion that each case was *sui generis* and that only confusion could result from the application of a maxim or series of maxims, each of which could not extend to all the multiform features of the particular case. One great advantage of the code is that it furnishes something like a standard of authority where none exists.

The most celebrated code before the Code Napoleon is the Code of Justinian. This code largely furnished the material of the Code Napoleon, and a passing reference to it is justifiable. In the early years of his reign, Justinian commissioned Tribonian, the ablest lawyer of his time, with the assistance of Theophilus, a professor in the law school of Constantinople, and Dorotheus, a professor in the law school of Berythus, and other associates, to codify the Roman civil law. They undertook to do this by collecting the imperial constitutions of the Roman emperors, remodelled so as to eliminate confusion, contradiction, repetition and disorder. Supplementary to this work, the authoritative commentaries of the jurists were harmonized and published under the title of Pendects or Digests. Based on the foregoing, the commission evolved a systematic treatise on the whole body of law in elementary form for the guidance of students and lawyers, which was put forth under the title of "Institutes." These books were followed by the "Novels" or new laws, and the whole constitutes what is known as the *Corpus Juris Civilis* of Justinian. The Roman law as thus expressed was the best and noblest development of the Roman civilization. It had a long contest, extending over a thousand years, with the forces of barbarism. It survived the blind brutality of the Middle Ages and now dominates the greater part of the civilized world.

About twelve centuries after the great work of Justinian was given the sanction of law by imperial edict, the Code Napoleon was promulgated. It was on March 31, 1804, that the French Civil Code was declared to be the law of France.

On September 3, 1807, it received the official title of the Code Napoleon. After Napoleon's downfall a law was passed restoring the original name, but a decree of March 27, 1852, reestablished the title of Code Napoleon. It goes now under the name of the French Civil Code.

Perhaps the inducing cause for the preparation of the Code Napoleon was established an authoritative body of law, and to remove all uncertainties as to legal doctrines. The great revolutions of France which preceded Napoleon's accession to power had overthrown many of the ancient conceptions of law; had rejected many of the royal ordinances and had advanced individualism to a dangerous eminence. The severities of the law of the old regime had been alleviated in certain provinces by exceptions to general laws and the recognition of binding local customs and usages. The law of France was in great confusion. The old regime had attempted to prepare a comprehensive plan of law based on the results of the labors of Tribonian, and had collected and adjusted some of the material. The two first assemblies of the Revolution addressed themselves to the task of unifying the law, but were able to prepare only a few fragments of it. There existed when the great Corsican became first consul a vast juridical literature, expository of the common customary law of France and many discordant decrees and statutes, naturally resulting from the disturbed political conditions. This condition of affairs quite justified Voltaire's sarcasm that a traveler in France had to change laws about as often as he changed horses. The want of a tribunal whose decisions might be received as of authority throughout France, had been a principal cause of the retention of those diversities in local customs, which had formerly regulated the different territorial divisions of the country. The National Convention undertook the removal of the cause of these uncertainties of doctrine, by the establishment of the Court of Cassation for the review of the judgments of the Court of Appeal of all the several departments. But this court had been in existence a little over ten years when Napoleon appointed his code commissioners,

and besides, the remedy of correcting these evils by judicial decision was inadequate.

Very soon after his accession to power as First Consul, Napoleon appointed a commission, or council of state, to prepare a code of laws for the French Empire. In communicating to the commissioners notice of their appointment, the Minister of Justice informed them that the First Consul desired that the work should be performed in the promptest possible manner. The arrangement of titles was soon settled by adopting the plan of the Institutes of Justinian in the general divisions of the code. The subject titles were (1) Of Persons, (2) Of Property and of different kinds of ownership, and (3) Of the different ways of acquiring property. Following this general arrangement, the preliminary draught of the Civil Code was made in four months. This draught, in the main, was an adoption of the text of the Roman law, or its approved glosses, except where the old local jurisprudence was adhered to. By this judicious plan the commissioners were enabled to complete the preliminary draught within such a short period. The draught was next submitted to the local courts of appeal of each of the departments, then one hundred or more in number. These tribunals reported freely their objections, proposed amendments and made suggestions. The draught was also submitted to the Court of Cassation, who also revised it and reported in detail their views. Afterwards, the original draught of the commissioners, with all these reports, passed under the revision of the section of legislation of the Council of State, composed of the President of the Court of Cassation and seven other eminent jurists. The whole matter then was brought before the Council of State, where each title was either passed as reported or amended by a majority vote. The Council of State was presided over by Napoleon, or during his absence, by Consul Cambaceres. Thirty members participated in the discussions. Napoleon personally engaged in many of them. His intervention in the discussion was usually upon questions in which directly or indirectly some political interest was more or less concerned.

He gave his reasons for his opinions; they were cogent, and, according to report, expressed with clearness and precision.

The form of the law having been thus determined, it was transmitted from the Council of State to the Tribunate, where it was again the subject of consideration and discussion. The views of the Tribunate were then reported to the Council of State, who passed on such amendments as the Tribunate had suggested. After the proposed law had been thus again passed upon in the Council of State, it was presented to the legislative chamber. Before this final state of the business, "the motives" of each of the proposed laws had been set forth in pamphlet form by "orators of the government." After four years of discussion, the different acts were consolidated into a single body of laws. The code as thus expressed was a fusion of customary laws, of royal ordinances, and laws of the Revolution, and of the vital principles of Roman private law expressed with remarkable clearness and brevity. So dominant are the principles of the Roman law that the peculiar French element is not even characteristic of the work.

Never was Napoleon's triumph more complete than in his code of law. The laurels of Marengo withered long ago and the sun that blazed in glory upon Austerlitz forever set on the fatal field of Waterloo. Exiled upon a lonely island, he had the satisfaction of feeling that though he was sheared of political empire the combined world could not shake off his empire of law.

The influence of the Code Napoleon has been very great not only in France but also abroad. Belgium was living under it, when the ruthless successor of Attilla laid his desolating arms upon that prosperous country. The Dutch, Italian and Portugese codes have taken it for a model. The Spanish code and the codes of Central and South America are virtual reproductions of it. It has had a potent influence on the boasted common law of England, and many of the principles of the English common law have been restated in consonance with some of its great postulates of natural equity. In our own country, the laws of the State of Louis-

iana are but its reflection and the great state of California has incorporated much of it in its system of jurisprudence. When Japan suddenly burst the cerements of its ancient feudalism and copied enthusiastically the political institutions of England and America, she repudiated the English common law and turned to the Code Napoleon for guidance and direction in the formulation of her system of jurisprudence. With the exception of the United States and England, the Code Napoleon, with more or less qualification on account of local circumstances, practically governs the civilized world.

It is especially noteworthy for its simplicity and clearness of statement. It has been the subject of heated controversies, but its adoption in Central and Southern Europe, in Central and South America, is irrefutable evidence of its great merit.

The Code Napoleon solved the problem of prescribing the law in those cases not expressly covered by its provisions, by requiring the judges to give decision on all cases whether contemplated or not by the Code and referring them generally to the following sources: (1) "Equite naturelle, loi naturelle, (2) Roman law, (3) Ancient customs, (4) Usages, examples, decisions and jurisprudence, (5) Droit common, (6) Maxims, doctrines and science. The Code has produced a number of commentaries, which has developed a system of equitable extension of its basic principles to conditions not expressly provided for. In this way the Code undertakes to meet every question that may arise in the complexities of modern civilization.

An excellent literal translation of the original edition of the Code Napoleon was made by a barrister of the Inner Temple, London, and may be found in the State library. It contains 2281 sections and in bulk it is about three-fourths of the size of one of our Georgia Reports. I was particularly struck with the amount of space given to the matter of divorce under the title "Of Persons," and to the subject of "Contracts of Marriage" under the title of "Modes of Acquiring Property." The Code Napoleon recognized divorce by mutual consent. This was only allowable where

the marriage relation had continued for two years and where the husband was over twenty-five years and the wife was between twenty-one and forty-five years. The provision for a consentient divorce is guarded with many restrictions. It was under these provisions that the great Emperor divorced his childless wife in order to contract a second marriage in the hope to establish a dynasty.

In the course of my reading I have examined essays and books in which the motive of Napoleon in causing the Code to be prepared was brought in question. One prominent writer attributes the inducing cause for the preparation of this monumental work to the vanity of the First Consul. The emperors Justinian and Theodosius had promulgated codes that had perpetuated their glory and names. These codes had been followed by the Prussian Code, which bore the name of the great Frederick, whom alone of modern strategists, Napoleon regarded as entitled to bear a comparison with himself. But the prevalent opinion is that the First Consul foresaw the necessity of providing a stable state when war should cease and his prodigious mind appreciated that such a result could only be secured by laws certain in statement, equitable and just in their scope, and impartial in their execution. The Emperor's motive is rather to be found in the latter concept, because when an exile at St. Helena he declared that the best monument which he had erected for himself was the promulgation of the Code Napoleon.